

## **2005 DRAFTING REQUEST**

### **Bill**

Received: **01/20/2005**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Koskinen**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - sales**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

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### **Pre Topic:**

DOA:.....Koskinen -

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### **Topic:**

Sales and use tax on electronic versions of certain tangible personal property

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### **Instructions:**

See Attached

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### **Drafting History:**

| <u>Vers.</u> | <u>Drafted</u>       | <u>Reviewed</u>        | <u>Typed</u>           | <u>Proofed</u> | <u>Submitted</u>       | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------------|------------------------|------------------------|----------------|------------------------|-----------------|-----------------|
| /?           |                      |                        |                        | _____          |                        |                 | S&L<br>Tax      |
| /P1          | jkreye<br>01/20/2005 | lkunkel<br>01/20/2005  | rschluet<br>01/20/2005 | _____          | sbasford<br>01/20/2005 |                 | S&L<br>Tax      |
| /1           | jkreye<br>01/23/2005 | csicilia<br>01/23/2005 | chaugen<br>01/23/2005  | _____          | sbasford<br>01/24/2005 |                 | S&L<br>Tax      |
|              | jkreye<br>01/25/2005 | lkunkel<br>01/25/2005  |                        | _____          |                        |                 |                 |

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|--------------|----------------------|-----------------------|------------------------|----------------|--|-----------------|-----------------|
| /2           | jkreye<br>01/27/2005 | lkunkel<br>01/27/2005 | jfrantze<br>01/26/2005 | _____          | mbarman<br>01/26/2005<br>mbarman<br>01/26/2005 |                 | S&L<br>Tax      |
| /3           | jkreye<br>02/02/2005 | lkunkel<br>02/02/2005 | rschluet<br>01/27/2005 | _____          | lemery<br>01/27/2005                           |                 | S&L<br>Tax      |
| /4           |                      |                       | pgreensl<br>02/02/2005 | _____          | sbasford<br>02/02/2005                         |                 |                 |

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| /1           | jkreye<br>01/23/2005<br>jkreye<br>01/25/2005 | csicilia<br>01/23/2005<br>lkunkel<br>01/25/2005 | chaugen<br>01/23/2005  |                | sbasford<br>01/24/2005 |                 | S&L<br>Tax      |

*Handwritten signatures and initials are present over the Drafting History table, including "7/2/05" and "P-1/5".*

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| /2           | jkreye<br>01/27/2005 | lkunkel<br>01/27/2005 | jfrantze<br>01/26/2005 | _____          | mbarman<br>01/26/2005 |                 | S&L             |
|              |                      |                       |                        | _____          | mbarman<br>01/26/2005 |                 | Tax             |
|              |                      |                       |                        | _____          |                       |                 |                 |
| /3           |                      |                       | rschluet<br>01/27/2005 | _____          | lemery<br>01/27/2005  |                 |                 |

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|              | jkreye<br>01/25/2005 | lkunkel<br>01/25/2005  |                        | _____          |                        |                 |                 |

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FE Sent For:

1/2 lmk 1/25  
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<END>

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See Attached

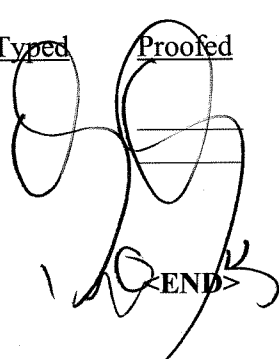
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| /? | jkreye | /p1 Ink 1/20 |  |  |  |  |  |
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FE Sent For:

A large, stylized handwritten signature is written over the 'Typed' and 'Proofed' columns of the drafting history table. Below the signature, the word 'END' is stamped in capital letters.

## 2005-07 Budget Bill Statutory Language Drafting Request

- **Topic: Sales or Use Tax on Electronic Versions of Tangible Personal Property.**
- Tracking Code:
- SBO team: Tax and Justice
- SBO analyst: John Koskinen
  - Phone: 266-2081
  - Email: john.koskinen@doa.state.wi.us
- **Agency acronym: DOR**
- **Agency number: 566**

1. Specifically impose tax on selected products that are furnished to customers electronically in order to maintain the same tax treatment as their tangible counterparts. However, rather than deeming the items to be tangible personal property, which in reality they are not, specifically impose a tax on the furnishing of such items in an electronic form, regardless of whether any tangible personal property is transferred.

See attached issue paper and drafting instructions from DOR.

**September 8, 2004**

**TITLE: IMPOSE SALES OR USE TAX ON ELECTRONIC VERSIONS OF  
TANGIBLE PERSONAL PROPERTY**

**DESCRIPTION OF CURRENT LAW AND PROBLEM**

In Wisconsin, only sales of tangible personal property and selected services are subject to Wisconsin sales or use tax. There is no imposition of tax on sales of real property or intangible property, unless the item would fall within one of the services that are subject to Wisconsin sales tax.

As technology evolves, it is becoming more common for items that were previously sold in a tangible form to be sold in an electronic form via the Internet. For example, a novel previously purchased in the form of a paperback book is now downloaded in a digital format to an electronic device that converts the digital information to text a person can read. While the sale of the paperback book is subject to sales tax, the sale of the digital download of the novel is not because the item sold is no longer tangible and that transfer of the digital good is not a service that is specifically subject to sales tax.

Examples of other items that when transferred in tangible form are taxable, but when delivered digitally in an electronic format are not, include music, movies, books, periodicals, finished artwork, and television and radio commercials. There are a few items that are taxable regardless of whether they are transferred in a tangible form:

- computer software, except custom software, is deemed by law to be tangible personal property without regard to the form in which it is transferred.
- taking photographs, reproducing them in a digital format, and delivering them electronically is a photographic service that is specifically subject to Wisconsin sales tax.
- pay-per-view movies, movie channels, and similar means of viewing motion pictures are cable television services that are specifically subject to tax. However, movies downloaded via the Internet may not meet Wisconsin's current definition of cable television service because that definition requires amplification of the program.

As more items are sold in an electronic format and are not subject to sales tax, the sales tax base erodes. Wisconsin recognized this erosion of the tax base many years ago with respect to software and amended the sales and use tax law to deem computer software, except custom computer software, to be tangible personal property and, therefore, taxable unless an exemption applied. Statutory language has not been changed to impose sales tax on the furnishing of other items furnished in an electronic form (e.g., music, literary works, movies, photographs, games, and commercial advertisements) where the tangible form is clearly subject to Wisconsin sales or use tax.

## **RECOMMENDATION FOR ACTION**

The proposal should do all of the following:

- Specifically impose tax on selected products that are furnished to customers electronically in order to maintain the same tax treatment as their tangible counterparts. However, rather than deeming the items to be tangible personal property, which in reality they are not, specifically impose a tax on the furnishing of such items in an electronic form, regardless of whether any tangible personal property is transferred.. The specific products that should be addressed are audiovisual works such as movies, games and radio and television commercials, literary works such as books and periodicals, sound recordings such as music downloads, and finished artwork, such as photographs.
- If an exemption applies to the item if transferred in a tangible form, an exemption should apply to the electronic equivalent as well.
- The incidental provisions that apply to property transferred with a service would also apply to the transfer of the above items with a service. For example, an electronic book that is transferred with a nontaxable education service should not be considered a sale of the taxable electronic item but rather should be considered the sale of a nontaxable education service with the transfer of the electronic item being incidental.

Note: Sourcing provisions contained in a separate proposal to conform the sales and use tax law to the Streamlined Sales and Use Tax Agreement should apply to the imposition of sales or use tax on these electronic items.

## **ADMINISTRATIVE IMPACT**

The department will use existing resources to explain the new tax treatment in publications, web site information, and customer service contacts. The department already spends time explaining why such items are currently not taxable when their tangible counterparts are.

## **FAIRNESS /TAX EQUITY**

It is not equitable that the manner in which a product is delivered determines its sales and use tax treatment. Businesses that have the capability to sell their product electronically have an advantage over businesses who sell the same thing in a tangible form and must charge sales tax.

## **IMPACT ON ECONOMIC DEVELOPMENT**

Unknown.

## **FISCAL EFFECT**

The table shows the estimated sales and use tax that would be collected on sales or use electronic equivalents of tangible personal property.

| Fiscal Estimate of Imposing Sales and Use Taxes on Electronic Equivalents of Tangible Personal Property |   |   |   |
|---|---|---|---|
| Product   | Estimated 2003 Wisconsin Sales (\$millions) | Estimated State Sales and Use Tax, FY06 (\$ millions) | Estimated Local Sales and Use Tax, FY06 (\$ millions) |
| Music   | \$4.6                                       | \$0.3   | minor   |
| eBooks  | 0.2   | minor   | minor   |
| Video Games   | 5.0   | 0.4   | minor   |
| Ring Tones  | 0.9   | 0.1   | minor   |
| Online Video Gaming   | 11.0  | 0.8   | 0.1   |
| Casual Online Games   | 1.0   | 0.1   | minor   |
| Finished Artwork  | minor                                       | minor   | minor   |
| <b>TOTAL</b>  | <b>\$22.7</b>                               | <b>\$1.7</b>  | <b>\$0.1</b>  |

Revenues for each electronic equivalent, except graphic design services, were obtained from various industry and media reports and were assumed to increase at an annual rate of 20%. Wisconsin sales of each product are assumed to be Wisconsin's share of disposable personal income, 1.83%, of national sales. A compliance rate of 90% was assumed for all products. Estimated sales of finished art are not available but taxes thereon are expected to be minor.

#### DRAFTING INSTRUCTIONS

*or 77.52(1)(a) — see SSTP — reference in 77.52(1)*

1. Create a provision in sec. 77.52, Wis. Stats., with reference to this provision in sec. 77.53, Wis. Stats. that specifically imposes a sales or use tax on the following items:

- Audiovisual works
- Literary works
- Sound recordings
- Finished artwork

"Audiovisual works" are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the form in which they are provided to the purchaser. Audio visual works include motion pictures, radio and television commercials, and games.

"Literary works" are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, including books and periodicals, regardless of the nature in which they are provided to the purchaser.

"Sound recordings" are works that result from the fixation of a series of musical, spoken, or other sounds, regardless of the form in which they are provided to the purchaser, including a digital musical recording.

"Finished art" means the final art used for actual reproduction by photomechanical or other processes, or for display purposes. Finished art includes drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals or assemblies, charts, graphs and illustrative material not reproduced.

2. Create an exemption in sec. 77.54, Wis. Stats., for the above items provided the item if sold in a tangible form would be exempt under sec. 77.54, 77.55, or 77.56, Wis. Stats.
3. Amend secs. 77.51(13)(e) and (13)(f), (14)(L) and 77.52(2m)(a) and (b), Wis. Stats., to include the above items with tangible personal property as it relates to the incidental transfer of such items with a service and the separate sale of such items apart from selected services.

#### **EFFECTIVE DATE AND/OR INITIAL APPLICABILITY**

First day of second month beginning after publication.

#### **INTERESTED/AFFECTED PARTIES**

Most of the items that will be taxed are sold to individuals who may not be interested in the issue. However, businesses that purchase these items may argue that this is a tax increase since these items are currently not taxable, although tax was paid by the business in the past because the items were only available in a tangible form.

#### **DOR CONTACT PERSON**

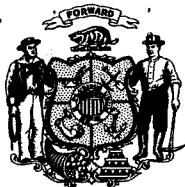
Diane Hardt  
(608) 266-2772  
[dhardt@dor.state.wi.us](mailto:dhardt@dor.state.wi.us)

#### **PREPARED BY**

Vicki L. Gibbons  
(608) 266-3873  
[vgibbons@dor.state.wi.us](mailto:vgibbons@dor.state.wi.us)

Fiscal Estimate prepared by Blair Kruger, R&P Division.

BK:skr  
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State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1796/P1

JK: ~~JK~~

DOA:.....Koskinen - Sales and use tax on electronic versions of certain tangible personal property

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

in 1-20-05

DN

Do Not Gen

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**TAXATION** ✓

**OTHER TAXATION** ✓

This bill imposes the sales tax and the use tax on audiovisual works, finished artwork, literary works, and sound recordings that are provided to a purchaser electronically. ✓

✓ This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

✓ For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 77.51 (1) of the statutes is renumbered 77.51 (1d). ✓

3 SECTION 2. 77.51 (1bm) of the statutes is created to read: ✓

4 77.51 (1bm) "Audiovisual works" means works that consist of a series of  
5 related images that are intrinsically intended to be shown by using machines or

1 devices, including projectors, viewers, or electronic equipment, and accompanied by  
2 sound.

3 **SECTION 3.** 77.51 (3s) of the statutes is created to read:

4 77.51 (3s) "Finished artwork" means the final art used for actual reproduction  
5 by photomechanical or other processes or for display purposes. "Finished artwork"  
6 includes drawings, paintings, designs, photographs, lettering, paste-ups,  
7 mechanicals, assemblies, charts, graphs, and illustrative material.

✓ \*\*\*\*NOTE: The drafting instructions included the phrase "not reproduced" after  
"illustrative material." I did not include that phrase because I'm not sure if it is meant  
to modify only illustrative material or all of the items listed in the 2nd sentence. Please  
advise.

8 **SECTION 4.** 77.51 (7d) of the statutes is created to read:

9 77.51 (7d) "Literary works" means works, not including audiovisual works,  
10 that are expressed in words, numbers, or other verbal or numerical symbols or  
11 indicia, including books and periodicals.

12 **SECTION 5.** 77.51 (13) (e) of the statutes is amended to read:

13 77.51 (13) (e) A person selling tangible personal property, audiovisual works,  
14 finished artwork, literary works, or sound recordings to a service provider who  
15 transfers the property, audiovisual work, finished artwork, literary work, or sound  
16 recording in conjunction with the selling, performing or furnishing of any service and  
17 the property, audiovisual work, finished artwork, literary work, or sound recording  
18 is incidental to the service, unless the service provider is selling, performing or  
19 furnishing services under s. 77.52 (2) (a) 7., 10., 11. and 20. This subsection does not  
20 apply to sub. (2).

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27;  
1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a.  
16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48.

21 **SECTION 6.** 77.51 (13) (f) of the statutes is amended to read:



1           77.51 (13) (f) A service provider who transfers tangible personal property,  
2           audiovisual works, finished artwork, literary works, or sound recordings in  
3           conjunction with but not incidental to the selling, performing or furnishing of any  
4           service and a service provider selling, performing or furnishing services under s.  
5           77.52 (2) (a) 7., 10., 11. and 20. This subsection does not apply to sub. (2).

**History:** 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48.

6           **SECTION 7.** 77.51 (14) (L) of the statutes is amended to read:

7           77.51 (14) (L) Transfers by a service provider of tangible personal property,  
8           audiovisual works, finished artwork, literary works, or sound recordings in  
9           conjunction with but not incidental to the selling, performing or furnishing of any  
10          service, and transfers by a service provider selling, performing or furnishing services  
11          under s. 77.52 (2) (a) 7., 10., 11. and 20. This subsection does not apply to sub. (2).

**History:** 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48.

12          **SECTION 8.** 77.51 (17s) of the statutes is created to read:

13          77.51 (17s) "Sound recordings" means works that result from the fixation of a  
14          series of musical, spoken, or other sounds.

15          **SECTION 9.** 77.52 (1) of the statutes is renumbered 77.52 (1) (a).

16          **SECTION 10.** 77.52 (1) (b) of the statutes is created to read:

17          77.52 (1) (b) For the privilege of selling, licensing, leasing, or renting  
18          audiovisual works, finished artwork, literary works, and sound recordings that are  
19          provided to a purchaser electronically, a tax is imposed on all retailers at the rate of  
20          5 percent of the gross receipts from the sale, license, lease, or rental of the audiovisual  
21          works, finished artwork, literary works, and sound recordings.

22          **SECTION 11.** 77.52 (2m) (a) of the statutes is amended to read:

1           77.52 (2m) (a) With respect to the services subject to tax under sub. (2), no part  
2 of the charge for the service may be deemed a sale or rental of tangible personal  
3 property, audiovisual works, finished artwork, literary works, or sound recordings  
4 if the property, audiovisual work, finished artwork, literary work, or sound recording  
5 transferred by the service provider is incidental to the selling, performing or  
6 furnishing of the service, except as provided in par. (b).

History: 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109; 2003 a. 33, 321.

7           **SECTION 12.** 77.52 (2m) (b) of the statutes is amended to read:

8           77.52 (2m) (b) With respect to the services subject to tax under sub. (2) (a) 7.,  
9 10., 11. and 20., all property, audiovisual works, finished artwork, literary works, or  
10 sound recordings physically transferred to the customer in conjunction with the  
11 selling, performing or furnishing of the service is a sale of tangible personal property,  
12 audiovisual works, finished artwork, literary works, or sound recordings separate  
13 from the selling, performing or furnishing of the service.

History: 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109; 2003 a. 33, 321.

14           **SECTION 13.** 77.53 (1) of the statutes is amended to read:

15           77.53 (1) Except as provided in sub. (1m), an excise tax is levied and imposed  
16 on the use or consumption in this state of taxable services under s. 77.52 purchased  
17 from any retailer, at the rate of 5% 5 percent of the sales price of those services; on  
18 the storage, use or other consumption in this state of tangible personal property  
19 purchased from any retailer, at the rate of 5% 5 percent of the sales price of that  
20 property; on the storage, use, or other consumption of audiovisual works, finished  
21 artwork, literary works, and sound recordings purchased from any retailer and  
22 provided to the purchaser electronically, at the rate of 5 percent of the sales price of  
23 such items; and on the storage, use or other consumption of tangible personal

1 property manufactured, processed or otherwise altered, in or outside this state, by  
2 the person who stores, uses or consumes it, from material purchased from any  
3 retailer, at the rate of ~~5%~~ 5 percent of the sales price of that material.

History: 1971 c. 125, 211; 1977 c. 29, 418; 1979 c. 1, 174; 1981 c. 317; 1983 a. 2; 1985 a. 29; 1987 a. 27, 268, 399; 1991 a. 39, 316; 1993 a. 16, 112; 1995 a. 27, 209; 1997 a. 27, 41, 237; 1999 a. 31; 2001 a. 109; 2003 a. 321.

4 **SECTION 14. 77.54 (48) of the statutes is created to read:**

5 77.54 (48) The gross receipts from the sale of and the storage, use, or other  
6 consumption of audiovisual works, finished artwork, literary works, and sound  
7 recordings that are provided to the purchaser electronically, if the sale of and the  
8 storage, use, or other consumption of the such items sold in a tangible form is exempt  
9 from taxation under this subchapter.

10 **SECTION 9441. Effective dates; revenue.**

11 (1) SALES AND USE TAX ON ITEMS DELIVERED ELECTRONICALLY. The treatment of  
12 sections 77.51 (1), (1bm), (3s), (7d), (13) (e) and (f), (14) (L), and (17s), 77.52 (1) (a) and  
13 (b), (2m) (a) and (b), 77.53 (1), and 77.54 (48) of the statutes takes effect on the first  
14 day of the 2nd month beginning after publication.

15 (END)

dm

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1796/P1dn  
JK: *link*

(date)

John:

Please review this draft carefully to ensure that it is consistent with your intent. ✓  
Please note that this draft may need to be reconciled, in part, with the Streamlined  
Sales Tax Project provisions in LRB-0303/1. ✓

Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: joseph.kreye@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1796/P1dn

JK:lmk:rs

January 20, 2005

John:

Please review this draft carefully to ensure that it is consistent with your intent. Please note that this draft may need to be reconciled, in part, with the Streamlined Sales Tax Project provisions in LRB-0303/1.

Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: joseph.kreye@legis.state.wi.us

1796

**Kreye, Joseph**

---

**From:** Kraus, Jennifer - DOA  
**Sent:** Friday, January 21, 2005 4:20 PM  
**To:** Kreye, Joseph  
**Subject:** FW: LRB Draft: 05-1796/P1 Sales and use tax on electronic versions of certain tangible personal property

Comments from DOR.

-----Original Message-----

**From:** Lashore, Patricia M  
**Sent:** Friday, January 21, 2005 4:10 PM  
**To:** Kraus, Jennifer - DOA  
**Subject:** LRB Draft: 05-1796/P1 Sales and use tax on electronic versions of certain tangible personal property

-----Original Message-----

**From:** Gibbons, Vicki L  
**Sent:** Friday, January 21, 2005 3:59 PM  
**To:** Lashore, Patricia M  
**Cc:** Brennan, Audra D; Hardt, Diane L; Stellick, Robert C, Jr.; Blair Kruger; Jeffrey Hanson; Rpfsn@dor.state.wi.us; Sherrie Gates-Hendrix  
**Subject:** FW: LRB Draft: 05-1796/P1 Sales and use tax on electronic versions of certain tangible personal property

Pat,

Attached are my suggested changes. I did review briefly with the Legal Staff. Please note that the majority of changes are as a result of work being done by SSTEP on uniform definitions for digital goods. I have tried to stay close to what they have developed to date but will most likely not approve for some time.



1796P1 2005 -  
Digital products...

Vicki L. Gibbons  
Staff Specialist  
Wisconsin Department of Revenue  
P.O. Box 8933  
Madison, WI 53708  
(608) 266-3873  
[vgibbons@dor.state.wi.us](mailto:vgibbons@dor.state.wi.us)

-----Original Message-----

**From:** Lashore, Patricia M  
**Sent:** Friday, January 21, 2005 9:29 AM  
**To:** Gates-Hendrix, Sherrie; Brennan, Audra D; Collier, Dennis J; Kruger, Blair P; Hardt, Diane L; Gibbons, Vicki L  
**Subject:** LRB Draft: 05-1796/P1 Sales and use tax on electronic versions of certain tangible personal property



05-1796/P1



05-1796/P1dn

Here's the first draft on this initiative. Please send comments and edits directly to me.  
Can we make an effort to get these yet today?

-----Original Message-----

**From:** Kraus, Jennifer - DOA

**Sent:** Thursday, January 20, 2005 5:28 PM

**To:** Lashore, Patricia M

**Subject:** FW: LRB Draft: 05-1796/P1 Sales and use tax on electronic versions of certain tangible personal property

-----Original Message-----

**From:** Merry-Mason, Monica

**Sent:** Thursday, January 20, 2005 5:01 PM

**To:** Kraus, Jennifer - DOA

**Subject:** FW: LRB Draft: 05-1796/P1 Sales and use tax on electronic versions of certain tangible personal property

-----Original Message-----

**From:** Schlueter, Ron [<mailto:Ron.Schlueter@legis.state.wi.us>] <<mailto:Ron.Schlueter@legis.state.wi.us>>

**Sent:** Thursday, January 20, 2005 1:47 PM

**To:** Koskinen, John

**Cc:** Hanaman, Cathlene; Haugen, Caroline; Merry-Mason, Monica

**Subject:** LRB Draft: 05-1796/P1 Sales and use tax on electronic versions of certain tangible personal property

Following is the PDF version of draft 05-1796/P1.

2005 □ 2006 LEGISLATURE

JK:lmk:rs

DOA:.....Koskinen □ Sales and use tax on electronic versions of certain tangible personal property

FOR 2005□07 BUDGET □□ NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

This bill imposes the sales tax and the use tax on audiovisual works, finished artwork, literary works, and ~~sound recordings~~ audio works that are ~~provided to a purchaser~~ delivered electronically to purchasers.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 77.51 (1) of the statutes is renumbered 77.51 (1d). 3

SECTION 2. 77.51 (1bm) of the statutes is created to read:

77.51 (1bm) "Audiovisual works" means ~~works that consist of a series of related images that are intrinsically intended to be shown by using machines or devices, including projectors, viewers, or electronic equipment, and accompanied by that, when shown in succession, impart an impression of~~



motion, together with any sound, including motion pictures, musical videos, and liver events. Audiovisual works does not include cable television systems services under in sec. 77.52(2)(a)12, Stats., UHF and VHF broadcast television services and digital versions thereof, or computer software.

**SECTION 3.** 77.51 (3s) of the statutes is created to read:

77.51 (3s) "Finished artwork" means the final art used for actual reproduction by photomechanical or other processes or for display purposes.

"Finished artwork" includes drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals, assemblies, charts, graphs, and illustrative material.

\*\*\*\*NOTE: The drafting instructions included the phrase "not reproduced" after "illustrative material." I did not include that phrase because I'm not sure if it is meant to modify only illustrative material or all of the items listed in the 2nd sentence. Please advise. Response: The "not reproduced" is intended to apply to all such that a painting that is not for reproduction would be finished artwork. The wording was taken from sec. Tax 11.70(1)(a), Wis. Adm. Code

**SECTION 4.** 77.51 (7d) of the statutes is created to read:

77.51 (7d) "Literary works" means works, not including audiovisual works, audio works or computer software, that are expressed in words, numbers, or other verbal or numerical symbols or indicia, including books and periodicals.

**SECTION 5.** 77.51 (13) (e) of the statutes is amended to read:

77.51 (13) (e) A person selling tangible personal property, audiovisual works, finished artwork, literary works, or sound recordings audio works to a service provider who transfers the property, audiovisual work, finished

artwork, literary work, ~~sound-recording~~ audio work in conjunction with the selling, performing or furnishing of any service and the property, audiovisual work, finished artwork, literary work, or ~~sound-recording~~ audio work is incidental to the service, unless the service provider is selling, performing or furnishing services under s. 77.52 (2) (a) 7., 10., 11. and 20. This subsection does not apply to sub. (2).

**SECTION 6.** 77.51 (13) (f) of the statutes is amended to read:

77.51 **(13)** (f) A service provider who transfers tangible personal property, audiovisual works, finished artwork, literary works, or ~~sound recordings~~ audio works in conjunction with but not incidental to the selling, performing or furnishing of any service and a service provider selling, performing or furnishing services under s. 77.52 (2) (a) 7., 10., 11. and 20. This subsection does not apply to sub. (2).

**SECTION 7.** 77.51 (14) (L) of the statutes is amended to read:

77.51 **(14)** (L) Transfers by a service provider of tangible personal property, audiovisual works, finished artwork, literary works, ~~sound recordings~~ audio works in conjunction with but not incidental to the selling, performing or furnishing of any service, and transfers by a service provider selling, performing or furnishing services under s. 77.52 (2) (a) 7., 10., 11. and 20. This subsection does not apply to sub. (2).

**SECTION 8.** 77.51 (17s) of the statutes is created to read:

77.51 **(17s)** “~~Sound recordings~~” “Audio works” means works that result

from the fixation of a series of musical, spoken, or other sounds, including prerecorded or live music, prerecorded or live readings of books or other written materials, prerecorded or live speeches, and digitized sound files that is downloaded to a telephone handset. "Audio works" does not include sounds accompanying a audiovisual work or AM or FM broadcast radio services or digital versions thereof.

**SECTION 9.** 77.52 (1) of the statutes is renumbered 77.52 (1) (a).

**SECTION 10.** 77.52 (1) (b) of the statutes is created to read:

77.52 (1) (b) For the privilege of selling, licensing, leasing, or renting audiovisual works, finished artwork, literary works, and sound recordings that ~~are provided to a purchaser~~ delivered electronically, a tax is imposed on all retailers at the rate of 5 percent of the gross receipts from the sale, license, lease, or rental of the audiovisual works, finished artwork, literary works, and ~~sound recordings~~ audio works.

**SECTION 11.** 77.52 (2m) (a) of the statutes is amended to read:

77.52 (2m) (a) With respect to the services subject to tax under sub. (2), no part of the charge for the service may be deemed a sale or rental of tangible personal property, audiovisual works, finished artwork, literary works, or sound recordings audio works if the property, audiovisual work, finished artwork, literary work, or sound recording audio work transferred by the service provider is incidental to the selling, performing or furnishing of the service, except as provided in par. (b).

SECTION 12. 77.52 (2m) (b) of the statutes is amended to read:

77.52 (2m) (b) With respect to the services subject to tax under sub. (2) (a) 7., 10., 11. and 20., all property, audiovisual works, finished artwork, literary works, sound-recording audio work physically transferred to the customer in conjunction with the selling, performing or furnishing of the service is a sale of tangible personal property, audiovisual works, finished artwork, literary works, or sound-recordings audio works separate from the selling, performing or furnishing of the service.

SECTION 13. 77.53 (1) of the statutes is amended to read:

77.53 (1) Except as provided in sub. (1m), an excise tax is levied and imposed on the use or consumption in this state of taxable services under s. 77.52 purchased from any retailer, at the rate of ~~5%~~ 5 percent of the sales price of those services; on the storage, use or other consumption in this state of tangible personal property purchased from any retailer, at the rate of ~~5%~~ 5 percent of the sales price of that property; on the storage, use, or other consumption of audiovisual works, finished artwork, literary works, sound recordings audio works purchased from any retailer and ~~provided to the purchaser~~ delivered electronically to the purchaser, at the rate of 5 percent of the sales price of such items; and on the storage, use or other consumption of tangible personal property manufactured, processed or otherwise altered, in or outside this state, by the person who stores, uses or consumes it, from material purchased from any retailer, at the rate of ~~5%~~ 5 percent of the sales

price of that material.

**SECTION 14. 77.54 (48)** of the statutes is created to read:

77.54 (48) The gross receipts from the sale of and the storage, use, or other consumption of audiovisual works, finished artwork, literary works, ~~sound recordings~~ audio works that are ~~provided to the purchaser~~ delivered electronically to purchasers, if the sale of and the storage, use, or other consumption of the such items sold in a tangible form is exempt from taxation under this subchapter.

**SECTION 9441. Effective dates; revenue.** (1) SALES AND USE TAX ON ITEMS DELIVERED ELECTRONICALLY. The treatment of sections 77.51 (1), (1bm), (3s), (7d), (13) (e) and (f), (14) (L), and (17s), 77.52 (1) (a) and (b), (2m) (a) and (b), 77.53 (1), and 77.54 (48) of the statutes takes effect on the first day of the 2nd month beginning after publication. (END)



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1796/P1

JK:lmk:rs

RMR \$95

DOA:.....Koskinen - Sales and use tax on electronic versions of certain tangible personal property

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

SA✓

m 1-23-05

Do NOT Gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

This bill imposes the sales tax and the use tax on audiovisual works, finished artwork, literary works, and ~~sound recordings~~ that are ~~provided~~ to a purchaser ~~electronically~~. *audio works delivered electronically*

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 77.51 (1) of the statutes is renumbered 77.51 (1d).

3 ~~SECTION 2. 77.51 (1bm) of the statutes is created to read:~~

4 77.51 (1bm) "Audiovisual works" means works that consist of a series of  
5 related images that are intrinsically intended to be shown by using machines or

INSERT 1-2

1 ~~devices, including projectors, viewers, or electronic equipment, and accompanied by~~

2 ~~sound~~

all of the following items regardless of whether such items are reproduced;

3 SECTION 3. 77.51 (3s) of the statutes is created to read:

4 77.51 (3s) "Finished artwork" means the final art used for actual reproduction

5 by photomechanical or other processes or for display purposes. "Finished artwork" also

6 includes (a) drawings, (b) paintings, (c) designs, (d) photographs, (e) lettering, (f) paste-ups,

7 (g) mechanicals, (h) assemblies, (i) charts, (j) graphs, and (k) illustrative material.

\*\*\*\*NOTE: The drafting instructions included the phrase "not reproduced" after "illustrative material." I did not include that phrase because I'm not sure if it is meant to modify only illustrative material or all of the items listed in the 2nd sentence. Please advise.

8 SECTION 4. 77.51 (7d) of the statutes is created to read:

9 77.51 (7d) "Literary works" means works, not including audiovisual works,

10 that are expressed in words, numbers, or other verbal or numerical symbols or

11 indicia, including books and periodicals.

12 SECTION 5. 77.51 (13) (e) of the statutes is amended to read:

13 77.51 (13) (e) A person selling tangible personal property, audiovisual works,

14 finished artwork, literary works, or ~~sound recordings~~ to a service provider who

15 transfers the property, audiovisual work, finished artwork, literary work, or ~~sound~~

16 recording in conjunction with the selling, performing or furnishing of any service and

17 the property, audiovisual work, finished artwork, literary work, or ~~sound recording~~

18 is incidental to the service, unless the service provider is selling, performing or

19 furnishing services under s. 77.52 (2) (a) 7., 10., 11. and 20. This subsection does not

20 apply to sub. (2).

21 SECTION 6. 77.51 (13) (f) of the statutes is amended to read:

22 77.51 (13) (f) A service provider who transfers tangible personal property,

23 audiovisual works, finished artwork, literary works, or ~~sound recordings~~ in

audio works

1 conjunction with but not incidental to the selling, performing or furnishing of any  
2 service and a service provider selling, performing or furnishing services under s.  
3 77.52 (2) (a) 7., 10., 11. and 20. This subsection does not apply to sub. (2).

4 **SECTION 7.** 77.51 (14) (L) of the statutes is amended to read:

5 77.51 (14) (L) Transfers by a service provider of tangible personal property,  
6 audiovisual works, finished artwork, literary works, or ~~sound recordings~~ in  
7 conjunction with but not incidental to the selling, performing or furnishing of any  
8 service, and transfers by a service provider selling, performing or furnishing services  
9 under s. 77.52 (2) (a) 7., 10., 11. and 20. This subsection does not apply to sub. (2).

10 **SECTION 8.** 77.51 (17s) of the statutes is created to read:

11 77.51 (17s) "Sound recordings" means works that result from the fixation of a  
12 series of musical, spoken, or other sounds.

13 **SECTION 9.** 77.52 (1) of the statutes is renumbered 77.52 (1) (a).

14 **SECTION 10.** 77.52 (1) (b) of the statutes is created to read:

15 77.52 (1) (b) For the privilege of selling, licensing, leasing, or renting  
16 audiovisual works, finished artwork, literary works, and ~~sound recordings~~ that are  
17 ~~provided~~ <sup>delivered</sup> to a purchaser electronically, a tax is imposed on all retailers at the rate of  
18 5 percent of the gross receipts from the sale, license, lease, or rental of the audiovisual  
19 works, finished artwork, literary works, and ~~sound recordings~~.

20 **SECTION 11.** 77.52 (2m) (a) of the statutes is amended to read:

21 77.52 (2m) (a) With respect to the services subject to tax under sub. (2), no part  
22 of the charge for the service may be deemed a sale or rental of tangible personal  
23 property, audiovisual works, finished artwork, literary works, or ~~sound recordings~~  
24 if the property, audiovisual work, finished artwork, literary work, or ~~sound recording~~

*audio works*

*audio works*

*audio works*

*audio work*



1 transferred by the service provider is incidental to the selling, performing or  
2 furnishing of the service, except as provided in par. (b).

3 **SECTION 12.** 77.52 (2m) (b) of the statutes is amended to read:

4 77.52 (2m) (b) With respect to the services subject to tax under sub. (2) (a) 7.,  
5 10., 11. and 20., all property, audiovisual works, finished artwork, literary works, or  
6 ~~sound recordings~~ physically transferred to the customer in conjunction with the  
7 selling, performing or furnishing of the service is a sale of tangible personal property,  
8 audiovisual works, finished artwork, literary works, or ~~sound recordings~~ separate  
9 from the selling, performing or furnishing of the service. *audio works*

10 **SECTION 13.** 77.53 (1) of the statutes is amended to read:

11 77.53 (1) Except as provided in sub. (1m), an excise tax is levied and imposed  
12 on the use or consumption in this state of taxable services under s. 77.52 purchased  
13 from any retailer, at the rate of <sup>PLAIN</sup> ~~5%~~ 5 percent of the sales price of those services; on  
14 the storage, use or other consumption in this state of tangible personal property  
15 purchased from any retailer, at the rate of <sup>PLAIN</sup> ~~5%~~ 5 percent of the sales price of that  
16 property; on the storage, use, or other consumption of audiovisual works, finished  
17 artwork, literary works, and ~~sound recordings~~ purchased from any retailer and *delivered*  
18 ~~provided~~ to the purchaser electronically, at the rate of ~~5%~~ 5 percent of the sales price of  
19 such items; and on the storage, use or other consumption of tangible personal  
20 property manufactured, processed or otherwise altered, in or outside this state, by  
21 the person who stores, uses or consumes it, from material purchased from any  
22 retailer, at the rate of <sup>PLAIN</sup> ~~5%~~ 5 percent of the sales price of that material.

23 **SECTION 14.** 77.54 (48) of the statutes is created to read:

24 77.54 (48) The gross receipts from the sale of and the storage, use, or other  
25 consumption of audiovisual works, finished artwork, literary works, and ~~sound~~

*audio works**delivered*

1 *recordings* that are *provided* to the purchaser *electronically* if the sale of and the  
2 storage, use, or other consumption of *the* such items sold in a tangible form is exempt  
3 from taxation under this subchapter.

4 **SECTION 9441. Effective dates; revenue.**

5 (1) SALES AND USE TAX ON ITEMS DELIVERED ELECTRONICALLY. The treatment of  
6 sections 77.51 (1), *(1bk)*, (1bm), (3s), (7d), (13) (e) and (f), *and* (14) (L), *and* ~~77.51~~ 77.52 (1) (a) and  
7 (b), (2m) (a) and (b), 77.53 (1), and 77.54 (48) of the statutes takes effect on the first  
8 day of the 2nd month beginning after publication.

9 (END)

**2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1796/lins  
JK:lmk:rs

**Insert 1 - 2**

**SECTION 1.** 77.51 (1bk) of the statutes is created to read:

77.51 (1bk) "Audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, including prerecorded or live music, prerecorded or live readings of books or other written materials, prerecorded or live speeches, and digitized sound files that are downloaded to a telephone handset. "Audio works" does not include amplitude modulation or frequency modulation broadcast radio services or digital versions of such services or sounds accompanying <sup>an</sup> audiovisual work.

**SECTION 2.** 77.51 (1bm) of the statutes is created to read:

77.51 (1bm) "Audiovisual works" means a series of related images that, when shown in succession, impart an impression of motion, together with <sup>any</sup> sound, including motion pictures, musical videos, and live events. "Audiovisual works" does not include ultrahigh frequency or very high frequency broadcast television services or digital versions of such services, cable television systems <sup>services</sup> ~~under s. 74.32~~ ~~or~~ computer software.

stay